IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 15TH NOVEMBER 2006 / 24TH KARTHIKA 1928

WP(C).No. 27972 OF 2003(E)

PETITIONER:

T.S.SAILAJA, SREENILAYAM,
ACHUTHAPURAM, POTTORE,
TRICHUR.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:

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1. ANDHRA BANK, HEAD OFFICE, SAIFABAD,
HYDERABAD - 500 004, REPRESENTED BY ITS
CHAIRMAN AND MANAGING DIRECTOR.

2. THE GENERAL MANAGER, ANDHRA BANK,
HEAD OFFICE, SAIFABAD, HYDERABAD.

3. THE BRANCH MANAGER, ANDHRA BANK,
ALLEPPEY BRANCH, ALAPPUZHA.

BY ADV. SRI.K.RAMAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 27972/03

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF PAGE NO. 6 OF THE SECONDARY SCHOOL LEAVING CERTIFICATE OF THE PETITIONER.
EXT.P2	TRUE COPY OF THE MARK LIST DATED 8.7.1992 OF PRE-DEGREE EXAMINATION UNIVERSITY OF CALICUT ISSUED TO THE PETITIONER.
EXT.P3	TRUE COPY OF THE DEATH CERTIFICATE DATED 1.6.2000 IN RESPECT OF THE PETITIONER HUSBAND P. JAYAKRISHNAN.
EXT.P3(a)	TRUE COPY OF THE DISCHARGE SUMMARY DATED 27.10.99 ISSUED BY DR. A. MARTHANA PILLAI, PROF. & HEAD OF DEPARTMENT, DEPARTMENT OF NEURO SURGERY, MEDICAL COLLEGE HOSPITAL, TRIVANDRUM.
EXT.P4	TRUE COPY OF APPLICATION DATED 22.6.2000 OF THE PETITIONER TO THE 2ND RESPONDENT.
EXT.P5	TRUE COPY OF THE APPLICATION DATED 7.1.2002 OF THE PETITIONER TO THE 2ND RESPONDENT.
EXT.P6	TRUE COPY OF JUDGMENT DATED 19.2.2003 IN O.P. 5807/2003 OF THIS COURT.
EXT.P7	TRUE COPY OF LETTER NO. 666/20/L/HC 869/62 DATED 25.8.2003 OF THE DY. GENERAL MANAGER OF THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

W.P.© 27972/2003

DATED THIS, THE 15TH DAY OF NOOVEMBER, 2006

J U D G M E N T

Petitioner is the widow of late Jayakrishnan, who died while in service of the respondent Bank, on 24.5.2000. She applied for compassionate appointment in the bank by filing Exts.P4 and P5 representations. Finding that the representations were not duly considered, petitioner preferred W.P.© 5807/2003 seeking for a direction to consider her claim. By Ext.P6, the Bank was directed to consider the representation preferred by the petitioner and dispose of the same, in accordance with law. Thereafter, the bank, by Ext.P7 communication dated 28.5.2003, informed the petitioner that her representation claiming appointment on compassionate ground was duly considered by the competent authority and it was felt that her case does not deserve the benefit of compassionate appointment since she was paid an amount of Rs. 4,23,142/- towards terminal benefits of her husband, particulars of which are stated in para 1 of the communication. Further, it was also stated that she is being paid family pension of an amount of Rs. 4,500/- per month. In such

circumstances, it was found that she has sufficient means to live upon reasonably and hence her claim was rejected. Petitioner impugns Ext.P7 in this writ petition and places reliance on an unreported decision of this Court rendered by the learned Single Judge on 21.10.2003 in **Sreeja vs. Andhra Bank** (O.P. 6368/2002) to support her claim for compassionate appointment in similar situation.

2. On the other hand, the respondent placed reliance on two decisions of the apex court rendered subsequently, in **State of Haryana v. Ankur Gupta** (2003(7) SCC 704) and also in **General Manager (D & PB) v. Kunti Tiwary** (2004(7) SCC 271) and contend for the position that the reasons stated in Ext.P7 communication declining the request of the petitioner does not call for any interference as the grounds for rejection of the claim after considering the financial position of the petitioner is not arbitrary or discriminatory. In **Ankur Gupta's** case (2003(7) SCC 704), in para 6, it was held as follows:

> "As was observed in State of Haryana v. Rani Devi (1996) 5 SCC 308) it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and

permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-Harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi case it was held that the scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In LIC of India v. Asha Ramachandra Ambekar (1994) 2 SCC 718) it was pointed out that the High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana (1994)4 SCC 138) that as a rule, in public service appointments should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. <u>But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased"</u> (emphasize supplied)

3. In the present case, the claim for appointment under Dying in Harness Scheme was denied not for the reason that the deceased hold a post to which the scheme does not apply and therefore, the entire passage in para 6 may not apply here. At the same time, it has to be held that the petitioner has no fundamental right under Articles 14 and 16 of the Constitution of India in the matter of claim for compassionate appointment. **General Manager (D& PB) v. Kunti Tiwary** (2004 (7) SCC 271) also arises out of a case relating to appointment in a Bank. In para 7 of the said judgment, the apex court has approved the criteria recommended by the Indian Banks Association and the following are the conditions for determining the financial condition of the family.

(a) Family pension

(b) Gratuity amount received.

(c) Employee's/employer's contribution to provident fund.

(d) Any compensation paid by the Bank or its Welfare Fund.

(e) Proceeds of LIC policy and other investments of the deceased employee.

(f) Income of family from other sources.

(g) Employment of other family members.

(h) Size of the family and liabilities, if any, etc.

4. The above conditions are the recommendations of the Indian Banks Association which was accepted in the scheme. In the present case, petitioner is being paid family pension of an amount of Rs. 4,664/- besides she was also paid terminal benefits which comes to Rs.4,23,141/- . She was also given reimbursement of the medical expenditure incurred for treatment of her husband of an amount of Rs. 1,06,423/-. Further, the family of the deceased consist of the petitioner and her daughter, besides the parents of the deceased. But the father of the deceased was a Railway employee who is receiving pension. In the above facts and circumstances, the criteria adopted for declining the request made by the petitioner and as stated in Ext.P7 cannot be said to be arbitrary or can it be said that relevant facts have not been taken into consideration, while taking a decision in the matter. In the light of the later decision of the apex court, there is no merit in the contention raised by the petitioner. However, it may be observed that the unreported decision cited by the petitioner in O.P. 6368/2002 would clearly show that it was a case where no reasons were stated for rejecting the claim of the petitioner therein. Even though, there may be observations in favour of the petitioner, it was adopting the financial criteria also as a reason, that the claim was rejected. As already

stated, that was a decision rendered on 21.10.2003 and the decision of the apex court reported in **Kunti Tiwary'**s case (2004(7)SCC 271) was rendered only subsequently and therefore this Court had no occasion to consider the same.

In the result, the writ petition fails. It is accordingly dismissed.

P.R. RAMAN,
(JUDGE)

knc/-